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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ROBERT P. GRIFFIN, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES PROBATION DEPARTMENT, Defendant and Respondent.	B241389 (Los Angeles County Super. Ct. No. MC023040)

APPEAL from an order of the Superior Court of Los Angeles County, Brian Yep, Judge. Affirmed.

Robert P. Griffin, in pro. per.; Craig E. Munson, for Plaintiff and Appellant.

Collins Collins Muir + Stewart, Tomas A. Guterres and Melinda W. Ebelhar for Defendant and Respondent.

INTRODUCTION

Plaintiff Robert Griffin, a former counselor with the Los Angeles County Office of Education, sued the County of Los Angeles Probation Department (Probation Department) for defamation and other related claims based on statements made by Probation Department personnel regarding alleged inappropriate communications between Plaintiff and a minor student. The trial court granted the Probation Department's special motion to strike the complaint as a SLAPP (strategic lawsuit against public participation), ruling the complaint arose out of statements made in connection with an authorized administrative proceeding and Plaintiff failed to establish the requisite probability of prevailing on his claims. (Code Civ. Proc., § 425.16.) We conclude the alleged defamatory communications, which were preparatory to and part of an official investigation into suspected child abuse, were within the ambit of the anti-SLAPP statute and privileged under Civil Code section 47. Accordingly, we affirm.

FACTS[1] AND PROCEDURAL BACKGROUND

In 2009, Plaintiff worked as a transitional counselor for the Los Angeles County Office of Education (LACOE) at the Barry J. Nidorf Juvenile Hall (BJNJH). As a transitional counselor, Plaintiff's duties included communicating effectively with staff, parents, students and other district personnel regarding the student's needs and progress,

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[1] For the purpose of assessing whether Plaintiff's causes of action arise out of protected petitioning activity, we state the facts alleged in the complaint and draw additional facts from the exhibits attached thereto. (See *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76 (*Cashman*) [the first prong of the anti-SLAPP analysis requires "a threshold showing that the challenged cause of action is one 'arising from' protected activity"]; Code Civ. Proc., § 425.16, subd. (b)(1).) In doing so, we do not intend to suggest that factual allegations and unauthenticated exhibits attached to a pleading are sufficient to meet a plaintiff's burden under the second prong of the anti-SLAPP analysis. On the contrary, where a defendant has made the threshold showing required under the first prong, we reaffirm the settled rule that a plaintiff must present "competent admissible evidence" in opposition to the anti-SLAPP motion. A plaintiff cannot rely solely on the complaint, even if verified, to demonstrate a probability of prevailing on a given claim. (*Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1017; *Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450, 469, 474 (*Hecimovich*).)

and collaborating with probation department staff to address student educational and vocational planning needs.

On two occasions in March 2009, Plaintiff allegedly placed telephone calls to a juvenile offender, Cameron W., who had been housed at BJNJH. According to Cameron, Plaintiff said he worked for "Intake" at BJNJH and was calling to "do a follow up" on how Cameron had been doing since his release. When Cameron told Plaintiff he had a probation officer, Plaintiff allegedly responded, "you don't need to call him. You just need to call me." Plaintiff warned Cameron "don't talk to your Probation Officer because all he has to do is just sign a piece of paper and you can go back to jail." He assured Cameron, "if you ever get in trouble, you just need to call me[;] I'm gonna be like your big brother." Though Cameron did not recall meeting Plaintiff, he said Plaintiff had been able to physically describe him on their initial telephone call. Cameron reported the calls to a vice principal at his current high school.

On March 30, 2009, the vice principal, Michael Clark, reported the alleged telephone calls to the Bureau Chief of Detention Services for the Probation Department, Elizabeth Garcia, and notified Garcia that, in his view, Plaintiff's interactions with Cameron constituted suspected child abuse. Later that day, Garcia sent an email instructing another Probation Department employee that Plaintiff was not permitted to work at BJNJH until further notice. The employee forward Garcia's email to a handful of other Probation Department and LACOE personnel to apprise them of the lockout instruction.

On April 3, 2009, the Probation Department's Supervising Detention Services Officer filed a suspected child abuse report against Plaintiff. Later that month, an investigator with the Probation Department's Special Investigations Unit interviewed Cameron about the reported telephone calls. In May 2009, a Labor Relations Advocate for LACOE interviewed Plaintiff.

On July 29, 2009, LACOE sent a letter to Plaintiff summarizing the results of its investigation. Based on its review of pertinent documents and interviews with Plaintiff, Cameron, and Probation Department officials, LACOE concluded there was "no substantial evidence" that Plaintiff's alleged statements to Cameron "amounted to or rise to the level of child abuse, as defined by law."

On August 4, 2009, following the completion of its own investigation, the Probation Department sent a letter to LACOE's Director of Juvenile Court Schools. Contrary to LACOE's findings, the Probation Department investigation "substantiated" Cameron's charges. Accordingly, the Probation Department advised LACOE that Plaintiff "will no longer be allowed to work in any of the Probation Department facility schools."

Thereafter, Plaintiff agreed to an interview with the Probation Department. Following the interview, the Probation Department issued a supplemental report of its findings. The report found Plaintiff's actions did not rise to the level of child abuse and there was no apparent violation of the law. Plaintiff did, however, admit that he advised Cameron to call him before Cameron's probation officer, which the Probation Department characterized as "very troubling," especially in light of Plaintiff's duty to "collaborate with Probation as is required by his job." Thus, the Probation Department's report concluded, "[w]hile there does not appear to be any violation of the law, [Plaintiff's] actions, as well as his perceptions regarding his role when dealing with probation youth, is troubling."

On January 15, 2010, an attorney representing Plaintiff sent an inquiry to the Probation Department concerning Plaintiff's status. A week later, Garcia sent a letter response confirming Plaintiff would "no longer be allowed to work in the Probation Department facility schools" because Cameron's allegations had been "substantiated by the [Probation Department's Special Investigation Unit]."

On June 18, 2010, the Probation Department's Placement Services Bureau Chief, Dave Mitchell, wrote to officials at the Phoenix House, a probation youth group home where Plaintiff had apparently been reassigned, requesting that Plaintiff be removed from the facility. Mitchell clarified the Probation Department's position, stating "[a]lthough LACOE has investigated this matter and exonerated [Plaintiff] of Child Abuse, Probation's internal investigation substantiated that [Plaintiff] was involved in behavior that was inappropriate and egregious."

On August 30, 2010, Plaintiff wrote an appeal letter to Mitchell, requesting that the Probation Department reconsider its decision to bar Plaintiff from its facilities. In response to Plaintiff's appeal, the Probation Department conducted an administrative review and concluded, "[b]ased on the fact that there has been no finding of child abuse or inappropriate conduct by [Plaintiff]," that the lockout should be lifted. On November 23, 2010, the Probation Department sent a letter to LACOE confirming its decision to revoke the lockout.[2]

On November 8, 2011, Plaintiff filed a complaint against the Probation Department and several other individuals and entities, including LACOE, asserting nine causes of action for (1) slander per se; (2) libel per se; (3) retaliation in violation of First Amendment right to consult counsel; (4) intentional interference with prospective economic relations; (5) intentional infliction of emotional distress; (6) negligent infliction of emotional distress; (7) invasion of privacy (false light); (8) harassment; and (9) injunctive relief.

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[2] Plaintiff's complaint includes additional allegations, principally targeted at LACOE and its employees, concerning (1) a report that Plaintiff inappropriately altered test scores at a LACOE facility; (2) a newspaper article that was allegedly altered by an "unknown" person and posted at an LACOE facility in a supposed attempt to implicate Plaintiff in other improper conduct with probation youths; (3) an October 28, 2011 report by LACOE that Plaintiff made other inappropriate comments to a minor student; and (4) an October 31, 2011 letter from LACOE advising Plaintiff that he was temporarily locked out of all LACOE school sites pending further investigation. As none of these allegations implicate Probation Department personnel, they are not germane to our review of the order granting the Probation Department's anti-SLAPP motion.

On December 15, 2011, the Probation Department filed its special motion to strike the complaint as a SLAPP.[3] Among other things, the Probation Department argued all causes of action arose out of protected conduct under Code of Civil Procedure[4] section 425.16 and all its employees' alleged communications were privileged under Civil Code section 47. Plaintiff opposed the motion, but did not supply a declaration or any other evidence from which to assess his probability of prevailing on his claims. On January 31, 2012, the trial court heard argument and took the matter under submission.

On February 3, 2012, the trial court entered its order granting the Probation Department's anti-SLAPP motion. Citing *Hansen v. Department of Corrections & Rehabilitation* (2008) 171 Cal.App.4th 1537 (*Hansen*), the court determined all causes of action arose from protected activity under section 425.16, thus shifting the burden to Plaintiff to show a probability of prevailing on the merits of his claims. The court concluded Plaintiff failed to meet this burden insofar as he had failed to submit a declaration or evidence in support of his opposition, and because the Probation Department employees' statements were privileged under Civil Code section 47. Plaintiff filed a timely notice of appeal from the order.

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[3] On December 12, 2011 (three days before the Probation Department filed its anti-SLAPP motion), LACOE filed a motion to transfer the action from the Los Angeles Superior Court branch in West Lancaster, to the branch court located in Norwalk. Plaintiff contends LACOE's motion mandated a stay of the proceedings and deprived the trial court of jurisdiction to rule on substantive issues while the motion was pending. Plaintiff's contention is not supported by applicable law. Though a motion to transfer venue under Code of Civil Procedure section 392, et seq. will generally operate as a supersedeas or stay of substantive proceedings (see *South Sutter, LLC v. LJ Sutter Partners, L.P.* (2011) 193 Cal.App.4th 634, 655), here, LACOE's motion did not seek a change of venue, but merely requested transfer to a different court within Los Angeles County, as provided by the Los Angeles Superior Court local rules. (See Code Civ. Proc., § 402, subd. (a)(2) [providing, "A superior court may specify by local rule the locations where certain types of actions or proceedings are to be heard or tried"].) As no change of venue was requested, the trial court had jurisdiction to entertain the Probation Department's anti-SLAPP motion.

[4] Unless otherwise designated, subsequent statutory references are to the Code of Civil Procedure.

DISCUSSION

1. *The Anti-SLAPP Statute and Standard of Review*

The anti-SLAPP statute, section 425.16, provides a procedure for expeditiously resolving "nonmeritorious litigation meant to chill the valid exercise of the constitutional rights of freedom of speech and petition in connection with a public issue." (*Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 235; *Hansen, supra,* 171 Cal.App.4th at pp. 1542-1543.) "When served with a SLAPP suit, the defendant may immediately move to strike the complaint under section 425.16. To determine whether this motion should be granted, the trial court must engage in a two-step process." (*Hansen,* at p. 1543; *Cashman, supra,* 29 Cal.4th at p. 76.)

The first prong of the anti-SLAPP analysis requires the court to decide "whether the defendant has made a threshold showing that the challenged cause of action is one 'arising from' protected activity." (*Cashman, supra,* 29 Cal.4th at p. 76; § 425.16, subd. (b)(1).) The defendant makes this showing by demonstrating the acts of which the plaintiff complains were taken "in furtherance of the [defendant's] right of petition or free speech under the United States or the California Constitution in connection with a public issue . . . ." (§ 425.16, subd. (b)(1); *Hansen, supra,* 171 Cal.App.4th at p. 1543.) To ensure that participation in matters of public significance is not chilled, the anti-SLAPP statute mandates that its terms "shall be construed broadly." (§ 425.16, subd. (a); see *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 23 ["The Legislature inserted the 'broad construction' provision out of concern that judicial decisions were construing [the public participation] element of the statute too narrowly"].)

If the court determines the defendant has made the threshold showing, "it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88; § 425.16, subd. (b)(1).) To establish the requisite probability of prevailing, the plaintiff need only have " 'stated and substantiated a legally sufficient claim.' " (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1123.) "Put another way, the plaintiff 'must demonstrate that the complaint is both legally sufficient and supported by a sufficient

prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.' " (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821 (*Wilson*).)

We review the questions of whether the action is a SLAPP and whether the plaintiff has shown a probability of prevailing de novo. (*Hansen, supra,* 171 Cal.App.4th at p. 1544.) "Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." (*Navellier v. Sletten, supra,* 29 Cal. 4th at p. 89.)

2. *The Probation Department's Statements in Connection with Investigating the Charges Against Plaintiff Are Protected by Section 425.16*

Section 425.16, subdivision (e), elaborates on what constitutes an " 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' . . . ." As pertinent here, such conduct includes "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." (§ 425.16, subd. (e)(2).) An internal investigation into the alleged misconduct of an individual working in a state-run facility—like the Probation Department's group home and school facilities—is an official proceeding authorized by law. (See *Hansen, supra,* 171 Cal.App.4th at p. 1544 [California Department of Corrections and Rehabilitation "internal investigation [into employee misconduct] itself was an official proceeding authorized by law"].)

Plaintiff "concedes that any actual investigation initiated by [Probation Department] employees or agents is subject to" section 425.16 and within the ambit of the protected conduct described by subdivision (e). Plaintiff nevertheless maintains that the Probation Department failed to make the requisite threshold showing, because, in Plaintiff's view, the anti-SLAPP statute does not protect statements made "prior to the issuance of a SCAR [suspected child abuse report][,] which served as the official

commencement of the investigation."[5] As the trial court recognized, *Hansen* is instructive on this point.

The plaintiff in *Hansen* was employed by California's Department of Corrections and Rehabilitation (CDCR) as a vocational instructor at its Correctional Custody Institute. (*Hansen, supra,* 171 Cal.App.4th at p. 1541.) During the plaintiff's tenure, CDCR began an investigation into allegations that he engaged in inappropriate interactions with inmates in violation of the Penal Code. The plaintiff retired from CDCR, but the investigation continued, culminating in CDCR agents executing a warrant to search the plaintiff's residence. Despite seizing several items from the plaintiff's home, no criminal charges were filed. Based on CDCR's continued pursuit of the charges after his retirement, the plaintiff filed a complaint alleging retaliation in violation of the Labor Code. (*Ibid*.)

The trial court granted CDCR's anti-SLAPP motion and the Court of Appeal affirmed the ruling. (*Hansen, supra,* 171 Cal.App.4th at p. 1542.) In addressing whether CDCR made a threshold showing that the complaint arose from protected activity, the appellate court explained, "[a]lthough [the plaintiff] was never formally charged with misconduct or a crime, communications *preparatory to or in anticipation of the bringing of an official proceeding* are within the protection of section 425.16." (*Id.* at p. 1544, italics added.) As such, the court held, "the objected-to statements and writings, i.e., the allegedly false reports of criminal activity, were made *in connection with an issue under consideration by an authorized official proceeding* and thus constitute protected activity under section 425.16, subdivision (e)(2)." (*Ibid.*, italics added.)

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[5] Plaintiff also points to allegations in his complaint concerning an "unknown" person posting an allegedly altered newspaper article at an LACOE facility and the October 2011 report by LACOE regarding other inappropriate comments that Plaintiff allegedly made to another minor student. Because neither of these acts involved Probation Department personnel, they are not relevant to our review of the order from which Plaintiff appealed. (See fn. 2, *ante*.)

The foregoing analysis applies with equal force to the communications and lockout instructions exchanged between Probation Department personnel in advance of filing an official SCAR. To begin, these communications were necessary to transmit information about the suspected child abuse from Garcia, who received the initial report from Cameron's school principal, to the Probation Department's Supervising Detention Services Officer who filed the SCAR. Furthermore, dissemination of the lockout instruction to responsible personnel within the Probation Department and LACOE was not only preparatory to the official action, but necessary to ensure that if the suspected child abuse proved to be true, other minors under the Probation Department's charge would not be harmed. Broadly construing section 425.16, subdivision (e)(2) as we must, we conclude these statements were made "*in connection with* an issue under consideration or review by . . . [an] official proceeding authorized by law." (Italics added.)

To be sure, like *Hansen*, where no formal criminal charges were filed, here, the Probation Department's initial suspicion of child abuse ultimately proved unfounded and the lockout instruction was revoked. Be that as it may, we agree with the *Hansen* court that an official investigation into suspected misconduct in a state-run facility, and the preparatory actions taken in anticipation of that official proceeding, are protected under section 425.16, subdivision (e)(2) even where the alleged misconduct is not substantiated by the investigation. Indeed, as noted above, this conclusion is compelled by the legislative mandate to broadly construe the anti-SLAPP statute. (§ 425.16, subd. (a); *Gilbert v. Sykes, supra,* 147 Cal.App.4th at p. 23.)

Because the Probation Department made the requisite threshold showing, the burden shifted to Plaintiff to establish a reasonable probability of prevailing on his action. We turn to that issue now.

3. *Plaintiff Failed to Establish a Probability of Prevailing on His Complaint; The Challenged Statements Are Privileged Under Civil Code Section 47*

As discussed, to establish a reasonable probability of prevailing under the second prong of the anti-SLAPP analysis, "the plaintiff 'must demonstrate that the complaint is

both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.' " (*Wilson, supra,* 28 Cal.4th at p. 821.) To demonstrate a sufficient prima facie showing, a plaintiff must present "competent and admissible evidence." (*Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1236; *Hecimovich, supra,* 203 Cal.App.4th at p. 469.)

Plaintiff contends the trial court erred in assessing his probability of prevailing, because the court required either a verified complaint, or a declaration or evidence supporting his opposition to the Probation Department's anti-SLAPP motion.[6] We disagree. In fact, the trial court was being charitable by suggesting a verified complaint might bridge the evidentiary void. Contrary to that suggestion, the majority view of the appellate courts, and the one to which this court subscribes, is that " ' "[t]he plaintiff may not rely solely on its complaint, *even if verified*; instead, its proof must be made upon competent admissible evidence." ' " (*Oviedo v. Windsor Twelve Properties, LLC* (2012) 212 Cal.App.4th 97, 109 & fn. 10, italics added; *Paiva v. Nichols, supra,* 168 Cal.App.4th at p. 1017; *Hecimovich, supra,* 203 Cal.App.4th at p. 474 & fn. 8; but see *Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1289-1290 ["verified allegations based on the personal knowledge of the pleader may be considered in deciding a section 425.16 motion"].) This is because "[a]n assessment of the probability of prevailing on the claim looks to *trial*, and the *evidence* that will be presented at that time." (*Evans v. Unkow* (1995) 38 Cal.App.4th 1490, 1497, second italics added.) Plaintiff's failure to present admissible evidence in opposition to the Probation Department's anti-SLAPP motion was an appropriate ground for concluding he failed to establish a probability of prevailing on his claim.

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[6] The trial court's order states: "The Court notes that Plaintiff's Complaint is not verified and that Plaintiff has not submitted any declaration or evidence in support of his opposition. As such, Plaintiff has not met his burden." However, the court also concluded Plaintiff's claims were "barred" because "the statements of the Defendant are privileged under [Civil Code] [s]ection 47."

In any event, apart from making a prima facie showing by admissible evidence, a plaintiff also must demonstrate, at the minimum, that his claim is legally sufficient. (*Hecimovich, supra,* 203 Cal.App.4th at p. 469.) In this case, Plaintiff's complaint does not measure up, because his claims based on the Probation Department employees' alleged statements are barred by the privilege codified in Civil Code section 47.

Civil Code section 47 "is derived from common law principles establishing a defense to defamation claims although it is now held applicable to any communication and all torts except malicious prosecution." (*Hansen, supra,* 171 Cal.App.4th at p. 1546.) As applicable here, section 47 provides that a privileged publication is one made "[i]n the proper discharge of an official duty" or "in any other official proceeding authorized by law." (Civ. Code, § 47, subds. (a) & (b).) This privilege is absolute. (*Hansen,* at p. 1546.)

As the court explained in *Hansen*, Civil Code section 47 "gives all persons the right to report crimes to . . . an appropriate regulatory agency, even if the report is made in bad faith. [Citation.] Such a communication, which is designed to prompt action by that government entity, is as much a part of an 'official proceeding' as a communication made after an official investigation has commenced. [Citation.] In short, this unqualified privilege applies to various communications intended to instigate official investigation into wrongdoing." (*Hansen, supra,* 171 Cal.App.4th at pp. 1546-1547.)

Here, the objected-to statements, beginning with Garcia's dissemination of lockout instructions to responsible personnel in the Probation Department and LACOE, were all communicated to initiate and as part of an official investigation into a report of suspected child abuse. Even though the suspicion of child abuse proved to be unfounded, the statements were nevertheless absolutely privileged under Civil Code section 47, subdivisions (a) and (b). (See, e.g., *Green v. Cortez* (1984) 151 Cal.App.3d 1068, 1073-1074 [news media's report of city councilmember's statements alleging plaintiff engaged in police brutality remained privileged under section 47, even after internal investigation exonerated plaintiff of charges].) Because Plaintiff cannot maintain an action against the Probation Department based on its employees' privileged statements, there is no probability he will prevail on his claims.

DISPOSITION

The order striking the complaint as to the Probation Department is affirmed. The Probation Department is entitled to its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, Acting P. J.

We concur:

ALDRICH, J.

LAVIN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.